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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**MONIQUE PEREZ, THAXTON V.
ROWE, JR., PORCELYNNE
HAWTHORNE, CORRY A.
WILLIAMS, ELIZABETH VILLA-
MONTES, KARLA P. SALAZAR,
BRIAN LYNCH, SEZGIN UNAY,
JOHN SOROCENSKI, BRANDON
GRZAN, and JOHN K. LYNCH,
Individually and On Behalf of All Others
Similarly Situated,**

Plaintiffs,

V.

**WELLS FARGO & COMPANY,
WELLS FARGO BANK, N.A., WFC
HOLDINGS CORPORATION,
WACHOVIA CORPORATION,
WACHOVIA BANK, N.A., and DOES
1-50, Inclusive**

Defendants.

Case No. 3:14-cv-00989

**COLLECTIVE ACTION
AND CLASS ACTION**

COMPLAINT FOR DAMAGES

1. Failure to Pay Overtime (Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*)
2. Failure to Pay for Breaks of 20 Minutes or Less in Duration in Violation of the FLSA (Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*)
3. Failure to Pay Overtime (Cal. Lab. Code §§ 510, 1194)
4. Violation of California Business and Professions Code § 17200
5. Failure to Pay for Breaks of 20 Minutes or Less in Duration in Violation of California State Law
6. Failure to Provide Meal Breaks (California Labor Code §§ 226.7, 512)

7. Failure to Allow Rest Breaks (California Labor Code § 226.7)
8. Waiting Time Penalties (California Labor Code §§ 201, 202, 203)
9. California Breach of Contract
10. Texas Breach of Contract
11. Failure to Pay for Breaks of 20 Minutes or Less in Duration in Violation of New York Labor Law (NYLL §§ 190, 191, 652(1))
12. Overtime Violations of New York Labor Law (NYLL §§ 190, 191, 652(1); NYCRR 142-2.2)

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs Monique Perez, Thaxton V. Rowe, Jr., Porcelynn Hawthorne, Corry A. Williams, Elizabeth Villa-Montes, Karla P. Salazar, Brian Lynch, Sezgin Unay, John Sorocenski, Brandon Grzan, and John K. Lynch, individually, on behalf of all others similarly situated nationwide, and on behalf of the putative class members as described herein (collectively, “Plaintiffs”) file this Original Complaint against Wells Fargo & Company, Wells Fargo Bank, N.A., WFC Holdings Corporation, Wachovia Corporation and Wachovia Bank, N.A. (collectively, “Defendants” or “Wells Fargo”) and in support thereof show as follows:

JURISDICTION

1. This Court has federal question jurisdiction over this action conferred by 29 U.S.C. § 216(b) and by the provisions of 28 U.S.C. § 1337 relating to “any civil action or proceeding arising under any act of Congress regulating commerce.”

1 meaning of 8 Cal. Code Regs. § 11140(2)(C), (F), and all other applicable statutes and regulations,
2 who were employed by Wells Fargo in the State of California within the requisite statutory and
3 common law time periods. Plaintiffs Monique Perez, Thaxton V. Rowe, Jr. and Porcelynne
4 Hawthorne are residents of California and will be referred to herein collectively as “California
5 Plaintiffs.”

6
7 8. Plaintiffs Corry A. Williams and Elizabeth Villa-Montes are former non-exempt
8 employees of Wells Fargo, as defined by 29 U.S.C. § 203(e), and all other applicable statutes and
9 regulations, who were employed by Wells Fargo within the requisite statutory and common law
10 time periods in the State of Texas. Plaintiffs Corry A. Williams and Elizabeth Villa-Montes are
11 residents of Texas and will be referred to herein collectively as “Texas Plaintiffs.”

12
13 9. Plaintiff Karla P. Salazar is a former non-exempt employee of Wells Fargo, as
14 defined by 29 U.S.C. § 203(e), and all other applicable statutes and regulations, who was employed
15 by Wells Fargo within the requisite statutory and common law time periods in the State of Florida.
16 Karla P. Salazar is a resident of Florida.

17
18 10. Plaintiffs Brian Lynch, Sezgin Unay, John Sorocenski, Brandon Grzan, and John
19 K. Lynch are former non-exempt employees of Defendants, as defined by 29 U.S.C. § 203(e), and
20 within the meaning of NYLL §§ 190(2), 651(5) and 12 NYCRR § 142-2.14, and all other
21 applicable statutes and regulations. Plaintiffs Brian Lynch, Sezgin Unay, John Sorocenski,
22 Brandon Grzan, and John K. Lynch were employed by Defendants in the State of New York within
23 the requisite statutory time periods, including applicable tolling. Plaintiffs Brian Lynch, Sezgin
24 Unay, John Sorocenski, Brandon Grzan, and John K. Lynch are residents of New York and will
25 be referred to herein collectively as “New York Plaintiffs.”
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1 15. Defendant Wachovia Corporation merged with and into Wells Fargo & Company
2 with the resulting title of Wells Fargo & Company on or about December 31, 2008. Upon
3 information and belief, Wells Fargo & Company has assumed the debts and liabilities of Wachovia
4 Corporation and its subsidiaries and affiliates. Upon information and belief, on or about October
5 31, 2009, Wachovia Corporation dissolved and no longer exists as a separate entity. Wachovia
6 Corporation may be served by serving its successor in interest, Wells Fargo & Company.

7
8 16. Defendant Wachovia Bank, N.A., merged with and into Wells Fargo Bank, N.A.,
9 with the resulting title of Wells Fargo Bank, N.A. on or about March 20, 2010. Upon information
10 and belief, Wells Fargo Bank, N.A. has assumed the debts and liabilities of Wachovia Bank, N.A.
11 and its subsidiaries and affiliates. Upon information and belief, Wachovia Bank, N.A. no longer
12 exists as a separate entity. Wachovia Bank, N.A. may be served by serving its successor in interest,
13 Wells Fargo Bank, N.A.

14
15 17. During the relevant statutory and common law periods, Defendants were
16 “employers” of Plaintiffs and members of the collective action, classes and subclasses within the
17 meaning of the Fair Labor Standards Act (“FLSA”), 8 Cal Code Regs §11140(2)(C),(F), NYLL
18 §§ 651(6), 190(3), and 2 NYCRR § 142-2.14, as well as all other applicable statutes and
19 regulations.
20

21 **THE FLSA COLLECTIVE ACTION AND STATE LAW CLASSES**

22 18. The FLSA Collective Action Members are all current and former non-exempt
23 employees of Wells Fargo nationwide, who worked for Wells Fargo within the period beginning
24 3 years prior to filing this lawsuit up to and including the time of judgment in this case, and had at
25 least one unpaid recorded break of 20 minutes or less in duration during the requisite statutory
26 period. Plaintiffs Monique Perez, Porcelynne Hawthorne, Thaxton V. Rowe, Jr., Corry A.
27
28

Williams, Karla P. Salazar, John Sorocenski, and John K. Lynch are class representatives for the FLSA Collective Action. All claims made by them on behalf of the FLSA Collective Action herein are also made on their own behalf, individually.

19. The California Class Members are all current and former non-exempt employees of Wells Fargo, who worked for Wells Fargo within the period beginning 4 years prior to filing this lawsuit up to and including the time of judgment of this action as further defined herein. Plaintiffs Monique Perez, Thaxton V. Rowe, Jr. and Porcelynne Hawthorne are class representatives for the California Class. All claims made by them on behalf of the California Class herein are also made on their own behalf, individually.

20. The Texas Class Members are all current and former non-exempt employees of Wells Fargo, who worked for Wells Fargo within the period beginning 4 years prior to filing this lawsuit up to and including the time of judgment of this action as further defined herein. Plaintiffs Corry A. Williams and Elizabeth Villa-Montes are class representatives for the Texas Class. All claims made by them on behalf of the Texas Class herein are also made on their own behalf, individually.

21. The New York Class Members are all current and former non-exempt employees of Defendants, who worked for Defendants within the period beginning 6 years prior to filing this lawsuit up to and including the time of judgment as further defined herein. Plaintiffs Brian Lynch, Sezgin Unay, John Sorocenski, Brandon Grzan, and John K. Lynch are class representatives for the New York Class. All claims made by them on behalf of the New York Class herein are also made on their own behalf, individually.

OVERVIEW

22. Plaintiffs bring this action to recover overtime compensation, unpaid wages, compensatory damages, litigation expenses, expert witness fees, attorneys' fees, costs of court, pre-judgment and post-judgment interest, liquidated damages, applicable penalties, all other available statutory remedies, equitable remedies and injunctive relief under the provisions of the California Labor Code (as well as all applicable Wage Orders and the California Business and Professions Code) and California common law, Texas common law, New York Labor Laws ("NYLL"), and the New York Codes, Rules and Regulations ("NYCRR"), as well as the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.* ("FLSA").

23. Plaintiffs are all former employees of Defendants who were classified as "non-exempt" employees under the FLSA, as well as all applicable state wage and hour laws.

24. Plaintiffs bring this action as a collective action on behalf of themselves and all others similarly situated nationwide whose rights were violated pursuant to the FLSA for Defendants' failure to pay Plaintiffs and the FLSA Collective Action Members regular and/or overtime wages for recorded breaks of 20 minutes or less in duration.

25. Plaintiffs also bring this action pursuant to Federal Rule of Civil Procedure 23 and seek to certify the following classes (including various sub-classes) that are later defined herein: (i) the California Class; (ii) the Texas Class; and (iii) the New York Class.

26. Plaintiffs also bring individual claims against Defendants for off-the-clock violations stemming from Defendants' failure to pay Plaintiffs overtime wages and/or minimum wages in willful violation of the FLSA and California and New York state laws.

FACTUAL BACKGROUND

27. Wells Fargo is one of the largest banks in the United States with operations throughout the country, including the U.S. Territories.

28. Wells Fargo employs non-exempt employees in each and every state in the United States.

29. Upon information and belief, during the last 3 years Wells Fargo has employed more than 150,000 non-exempt employees nationwide.

30. Upon information and belief, during the last 4 years Wells Fargo has employed more than 25,000 non-exempt employees in California.

31. Upon information and belief, in the last 4 years Wells Fargo has employed more than 15,000 non-exempt employees in Texas.

32. Upon information and belief, in the last 6 years Wells Fargo has employed more than 10,000 non-exempt employees in New York.

33. Wells Fargo utilizes the same electronic timekeeping system with respect to its non-exempt employees nationwide.

34. The non-exempt employees of Wells Fargo nationwide are required to use an electronic timekeeping system known as TimeTracker to record their time. Prior to TimeTracker, the Wells Fargo non-exempt employees were required to record their time using an electronic timekeeping system known as WebTime.

35. Wells Fargo utilizes the same pay system with respect to its non-exempt employees nationwide.

36. Wells Fargo requires that its non-exempt employees clock out when taking a break and clock in at the end of a break.

1 37. Wells Fargo's timekeeping and pay systems are devised such that its non-exempt
2 employees are not paid for any break during which the employee is clocked out.

3 38. Wells Fargo maintains records of the recorded, unpaid breaks taken by their non-
4 exempt employees, including Plaintiffs and the Collective Action Members and Class Members.
5 These records reflect the amount of time recorded for the break for which the non-exempt
6 employee was not paid.

7
8 39. Wells Fargo provides a Team Member Handbook to its non-exempt employees,
9 which provides the terms and conditions of the employment for Wells Fargo's non-exempt
10 workers.

11 40. The Wells Fargo handbook provides that mealtimes are not to be considered time
12 worked if they are generally at least 30 minutes long.

13
14 41. The Wells Fargo handbook also provides that rest periods of no more than 15
15 minutes must be compensated.

16 42. The Wells Fargo Team Member Handbook and other employee materials promised
17 that bona fide meal breaks would be at least 30 minutes in duration. Therefore, "meal breaks" of
18 that were not at least 30 minutes in duration were not "bona fide" and should have been paid.

19
20 43. During the relevant time periods, Wells Fargo non-exempt employees nationwide,
21 including Plaintiffs and the Collective Action Members and Class Members, have recorded breaks
22 of 20 minutes or less in duration for which they were not paid regular wages and/or overtime
23 compensation.

24
25 44. At all times relevant to this action Defendants have been subject to the requirements
26 of the FLSA, California Labor Code, California state law, Texas state law, NYLL, and NYCRR.

1 45. Defendants willfully violated the provisions of the FLSA, California Labor Code,
2 Texas common law, NYLL, and NYCRR, in that Plaintiffs and the Collective Action Members
3 and Class Members were not properly compensated.

4 **FLSA COLLECTIVE ACTION ALLEGATIONS**

5 46. Plaintiffs Monique Perez, Porcelynne Hawthorne, Thaxton V. Rowe, Jr., Corry A.
6 Williams, Karla P. Salazar, John Sorocenski, and John K. Lynch (“FLSA Class Representatives”)
7 bring the claims herein for violations of the FLSA as a collective action pursuant to section 216(b)
8 of the FLSA on behalf of themselves and all similarly situated non-exempt employees of Wells
9 Fargo nationwide at any time within the three years prior to the filing of this action, including all
10 applicable tolling, through the date of the disposition of this matter, who recorded breaks of 20
11 minutes or less in duration for which they were not paid regular and/or overtime wages.
12

13 47. The FLSA Collective Action is defined as:
14

15 All current and former non-exempt Wells Fargo employees nationwide who at any
16 time during the three years preceding the filing of this lawsuit through the date of
17 disposition of, or judgment in, this action, recorded one or more breaks of 20
18 minutes or less in duration for which they were not paid regular wages and/or
19 overtime compensation.

20 48. All FLSA Collective Action Members are similarly situated in that they were/are
21 subject to the same pay provisions and were/are subject to Wells Fargo’s common practice, policy
22 or plan of unlawfully failing to pay for recorded breaks of 20 minutes or less in duration in violation
23 of the FLSA.

24 49. Other employees have been victimized by this pattern, practice, and policy of Wells
25 Fargo that is in violation of the FLSA. Plaintiffs are aware that these illegal practices and policies
26 of Wells Fargo have been imposed on other non-exempt workers.
27
28

1 50. The claims for violations of the FLSA may be brought and maintained as an “opt-
2 in” collective action because the FLSA Class Representatives and FLSA Collective Action
3 members are “similarly situated.”

4 51. Plaintiffs request that Wells Fargo provide the last known name, address, telephone
5 numbers, and dates of employment of the putative FLSA Collective Action Members so that notice
6 may be provided to these workers as promptly as possible to provide them with an opportunity to
7 join this action.
8

9 **CALIFORNIA CLASS ALLEGATIONS**

10 52. Plaintiffs Monique Perez, Thaxton V. Rowe, Jr. and Porcelynne Hawthorne
11 (“California Plaintiffs”) are class representatives for the California Class.
12

13 53. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23 for
14 violations of California's Wage and Hour Laws, on behalf of themselves and all other similarly
15 situated non-exempt Wells Fargo employees in California, who worked at least one six-hour shift
16 during the course of their employment, and who were denied statutorily mandated "off-duty" meal
17 periods and rest periods during that time, are owed overtime wages and/or are owed wages for
18 recorded, unpaid breaks of 15 minutes or less in duration.
19

20 54. Other employees have been victimized by this pattern, practice, and policy of Wells
21 Fargo that is in violation of California's Wage and Hour Laws. Plaintiffs are aware that the illegal
22 practices and policies of Wells Fargo have been imposed on other non-exempt workers.
23

24 55. Under California law, rest periods are counted as time worked. Wage Orders Nos.
25 1-2001-16-2001, §§ 11-12(A) (8 Cal Code Regs §§11010-11160, §§ 11-12(A)).

26 56. California requires that bona fide meal periods be at least 30 minutes
27 (uninterrupted) or they are considered time worked. Cal. Lab. Code § 512(a).
28

1 57. The Wells Fargo Team Member Handbook and policy documents provide that bona
2 fide meal breaks are at least 30 minutes establishing an enforceable promise or implied or express
3 contract under California state common law.

4 58. Likewise, the Wells Fargo handbook and policy documents provide that rest
5 periods of no more than 15 minutes must be compensated establishing an enforceable promise or
6 implied or express contract under California state common law.

7
8 59. Plaintiffs Monique Perez, Thaxton V. Rowe, Jr. and Porcelynne Hawthorne bring
9 this action individually and in a representative capacity on behalf of all similarly situated persons
10 pursuant to Rule 23 and California Business and Professions Code §§ 17203 and 17204. The
11 California Class is defined as follows:

12
13 All persons who at any time in the 4 years preceding the filing of this lawsuit through the
14 date of disposition of this matter are/were employed by Wells Fargo as a non-exempt
15 employee in the State of California and who (a) recorded breaks of 15 minutes or less in
16 duration for which they were not paid regular or overtime wages; and/or (b) are owed
17 wages for missed meal breaks; and/or (c) are owed wages for missed rest breaks.

18 60. To the extent the Court finds necessary or appropriate, California Plaintiffs reserve
19 the right to seek to divide the California Class into one or more subclasses.

20 61. *Numerosity.* The California Class is so numerous that joinder of all members is
21 impracticable. Upon information and belief, Wells Fargo has employed thousands of persons who
22 meet the definition of the California Class. The number and identity of the proposed California
23 Class Members are readily ascertainable through inspection of Wells Fargo's records.

24 62. *Commonality.* Common questions of law and fact exist as to members of the
25 California Class, including but not limited to the following:

- a. Whether Wells Fargo implemented and engaged in a systematic practice whereby it unlawfully failed to compensate its non-exempt employees for recorded breaks of 15 minutes or less in duration;
- b. Whether Wells Fargo implemented and engaged in a systematic practice whereby it unlawfully failed to provide its non-exempt employees with "off-duty" rest periods;
- c. Whether Wells Fargo implemented and engaged in a systematic practice whereby it unlawfully failed to provide its non-exempt employees with "off duty" meal periods;
- d. Whether Wells Fargo has willfully failed to pay at the time of termination of employment all earned wages as a consequence of failing to provide required meal and rest periods and overtime compensation, and regular wages;
- e. Whether the systematic acts and practices of Wells Fargo as alleged herein violated applicable provisions of the Labor Code including but not limited to sections 226 and 226.7 as well as the applicable Wage Orders;
- f. Whether Wells Fargo engaged in unfair business practices in violation of the California Business & Professions Code, including Business and Professions Code sections 17200, *et seq.*
- g. Whether Wells Fargo employee handbooks or policy manuals described bona fide meal breaks as being 30 minutes or more;
- h. Whether such a provision in the employee handbooks or policy manuals created an enforceable promise or other contractual obligation on the part of Wells Fargo to pay its non-exempt employees for meal breaks under 30 minutes;
- i. Whether Wells Fargo employee handbooks or policy manuals provide that breaks of no more than 15 minutes must be counted as time worked;

1 j. Whether such a provision in the employee handbooks or policy manuals created an
2 enforceable promise or other contractual obligation on the part of Wells Fargo to pay
3 its non-exempt employees for breaks that were no more than 15 minutes in duration;

4 k. Whether Wells Fargo breached such promises or obligations; and

5 l. Whether the California Class Members are entitled to recover for such breaches.

6 63. *Typicality.* Plaintiffs' claims are typical of the California Class Members' claims.
7
8 Plaintiffs and the California Class Members have been denied "off-duty" meal periods and rest
9 periods and were not paid for recorded breaks of 15 minutes or less in duration. Plaintiff and
10 Members of the Class have not been paid all earned wages owed as a result of the denial of "off-
11 duty" meal and rest periods and failure to be compensated for recorded breaks of 15 minutes or
12 less in duration.

13
14 64. *Predominance.* Questions of fact and law common to the California Class
15 Members predominate over any questions affecting only individual members. California Plaintiffs
16 and the other members of the California Class have claims that derive from the same generally
17 applicable policies or practices and do not depend on the personal circumstances of each California
18 Class member. Thus, California Plaintiffs' experiences are typical of the experiences of the
19 California Class Members because they are or were all non-exempt employees of Wells Fargo in
20 California who sustained damages, including non-payment of wages, as a result of generally
21 applicable policies and practices of Wells Fargo that were in violation of law as described herein.

22
23 65. *Adequacy of Representation.* The California Plaintiffs will fairly and adequately
24 protect the interests of the California Class Members and have retained counsel experienced in
25 pursuing complex employment matters and class action/multi-party litigation who will adequately,
26 competently and vigorously represent the interests of the California Class Members. The
27
28

1 California Plaintiffs' claims are not adverse or in conflict with the claims of the California Class
2 Members.

3 66. *Superiority.* Class action treatment is superior to other available methods for the
4 fair and efficient adjudication of the controversy alleged herein. Treating this as a class action will
5 permit a large number of persons to prosecute their common claims in a single forum
6 simultaneously, efficiently, and without the duplication of effort and expenses that numerous
7 individual actions would entail. The California Class Members are readily ascertainable by Wells
8 Fargo from the time records in its possession, and from its own records of which current and former
9 employees are/were non-exempt workers. The damages can be readily calculated from those time
10 records by applying the pay rate also readily available to Wells Fargo.
11

12 **TEXAS CLASS ALLEGATIONS**

13
14 67. Plaintiffs Corry A. Williams and Elizabeth Villa-Montes ("Texas Plaintiffs") are
15 class representatives for the Texas Class.

16 68. The Texas Plaintiffs bring this class action pursuant to Rule 23 and Texas common
17 law, on behalf of themselves and all others similarly situated who are/were non-exempt Wells
18 Fargo employees in Texas who are owed wages for recorded, unpaid breaks of 15 minutes or less
19 in duration and/or recorded unpaid breaks that do not constitute bona fide meal periods.
20

21 69. Other employees have been victimized by this pattern, practice, and policy of Wells
22 Fargo that is in violation of Texas common law. Plaintiffs are aware that the illegal practices and
23 policies of Wells Fargo have been imposed on other non-exempt workers.
24

25 70. The Wells Fargo Team Member Handbook and policy documents provide that bona
26 fide meal breaks are at least 30 minutes establishing an enforceable promise or implied or express
27 contract under Texas common law.
28

1 71. Likewise, the Wells Fargo handbook and policy documents provide that rest
2 periods of no more than 15 minutes must be compensated establishing an enforceable promise or
3 implied or express contract under California state common law.

4 72. The Texas Plaintiffs bring this action individually and in a representative capacity
5 on behalf of all similarly situated persons pursuant to Texas common law. The Texas Class is
6 defined as follows:
7

8 All persons who at any time in the 4 years preceding the filing of this lawsuit through the
9 date of disposition of this matter are/were employed by Wells Fargo as a non-exempt
10 employee in the State of Texas and who recorded breaks of 15 minutes or less in duration
11 for which they were not paid regular or overtime wages and/or were not paid for breaks
12 that do not constitute bona fide meal periods.

13 73. To the extent the Court finds necessary or appropriate, Texas Plaintiffs reserve the
14 right to seek to divide the Texas Class into one or more subclasses.

15 74. *Numerosity.* The Texas Class is so numerous that joinder of all members is
16 impracticable. Upon information and belief, Wells Fargo has employed thousands of persons who
17 meet the definition of the Texas Class. The number and identity of the proposed Texas Class
18 Members are readily ascertainable through inspection of Wells Fargo's records.

19 75. *Commonality.* Common questions of law and fact exist as to members of the Texas
20 Class, including but not limited to the following:

- 21 a. Whether Wells Fargo implemented and engaged in a systematic practice whereby it
22 unlawfully failed to compensate its non-exempt employees for recorded breaks of 15
23 minutes or less in duration;
24 b. Whether Wells Fargo employee handbooks or policy manuals described bona fide meal
25 breaks as being 30 minutes or more;
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- c. Whether such a provision in the employee handbooks or policy manuals created an enforceable promise or other contractual obligation on the part of Wells Fargo to pay its non-exempt employees for meal breaks less than 30 minutes;
- d. Whether Wells Fargo employee handbooks or policy manuals provide that breaks of less than 15 minutes must be counted as time worked;
- e. Whether such a provision in the employee handbooks or policy manuals created an enforceable promise or other contractual obligation on the part of Wells Fargo to pay its non-exempt employees for breaks that were less than 15 minutes in duration;
- f. Whether Wells Fargo breached such promises or obligations; and
- g. Whether the Texas Class Members are entitled to recover for such breaches.

76. *Typicality.* Plaintiffs' claims are typical of the Texas Class Members' claims. Plaintiffs and the Texas Class were not paid for recorded breaks of 15 minutes or less in duration and/or were not compensated for non bona fide meal breaks. Plaintiff and Members of the Class have not been paid all earned wages owed as a result of the failure to be compensated for such breaks.

77. *Predominance.* Questions of fact and law common to the Texas Class Members predominate over any questions affecting only individual members. Texas Plaintiffs and the other members of the Texas Class have claims that derive from the same generally applicable policies or practices and do not depend on the personal circumstances of each Texas Class member. Thus, Texas Plaintiffs' experiences are typical of the experiences of the Texas Class Members because they are or were all non-exempt employees of Wells Fargo in Texas who sustained damages, including non-payment of wages, as a result of generally applicable policies and practices of Wells Fargo that were in violation of law as described herein.

1 78. *Adequacy of Representation.* The Texas Plaintiffs will fairly and adequately protect
 2 the interests of the Texas Class Members and have retained counsel experienced in pursuing
 3 complex employment matters and class action/multi-party litigation who will adequately,
 4 competently and vigorously represent the interests of the Texas Class Members. The Texas
 5 Plaintiffs' claims are not adverse or in conflict with the claims of the Texas Class Members.

6 79. *Superiority.* Class action treatment is superior to other available methods for the
 7 fair and efficient adjudication of the controversy alleged herein. Treating this as a class action will
 8 permit a large number of persons to prosecute their common claims in a single forum
 9 simultaneously, efficiently, and without the duplication of effort and expenses that numerous
 10 individual actions would entail. The Texas Class members are readily ascertainable by Wells
 11 Fargo from the time records in its possession, and from its own records of which current and former
 12 employees are/were non-exempt workers. The damages can be readily calculated from those time
 13 records by applying the pay rate also readily available to Wells Fargo.

14 **NEW YORK CLASS ALLEGATIONS**

15 80. Plaintiffs Brian Lynch, Sezgin Unay, John Sorocenski, Brandon Grzan, and John
 16 K. Lynch ("New York Plaintiffs") are class representatives for the New York Class.

17 81. The New York Plaintiffs bring New York state law claims individually and on
 18 behalf of a class of all non-exempt Wells Fargo employees who were, are or will be employed by
 19 Wells Fargo in the State of New York during the period of six years prior to the commencement
 20 of this action through the date of judgment of this action, and who recorded breaks of 20 minutes
 21 or less in duration, but were not paid regular wages and/or overtime compensation for those breaks.

22 82. Plaintiffs bring these claims for relief for violation of the NYLL and NYCRR as a
 23 class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

1 83. The New York Class is defined as follows:

2 All persons who at any time in the 6 years preceding the filing of this lawsuit through the
3 date of disposition of this matter are/were employed by Wells Fargo as a non-exempt
4 employee in the State of New York and who recorded breaks of 20 minutes or less in
5 duration for which they were not paid regular or overtime wages.

6 84. *Numerosity.* The New York Class Members are so numerous that joinder of all
7 members is impracticable. Upon information and belief, Wells Fargo has employed thousands, of
8 persons who meet the definition of the New York Class. The number and identity of the proposed
9 New York Class Members are readily ascertainable through inspection of Wells Fargo's records

10 85. *Commonality.* Common questions of law and fact exist as to members of the New
11 York Class, including but not limited to the following: (a) whether Wells Fargo failed to pay its
12 non-exempt employees for recorded breaks of 20 minutes or less in duration; and (b) whether
13 Wells Fargo violated the NYLL and NYCRR by failing to pay for such recorded breaks.

14 86. *Typicality.* Plaintiffs' claims are typical of the class members' claims. The New
15 York Plaintiffs, like the other members of the New York Class, were subject to Wells Fargo's
16 policy and practice of not properly paying its non-exempt employees for recorded breaks of 20
17 minutes or less in duration in violation of New York state laws.

18 87. *Predominance.* Questions of fact and law common to the New York Class
19 Members predominate over any questions affecting only individual members. Wells Fargo's
20 failure to pay its non-exempt employees for recorded breaks of 20 minutes or less in duration as
21 required by the NYLL and NYCRR results from generally applicable policies or practices and
22 does not depend on the personal circumstances of class members. Thus, the New York Plaintiffs'
23 experiences are typical of the experiences of the New York Class Members because they are non-
24 exempt employees of Wells Fargo in New York who sustained damages including non-payment
25 of wages for recorded breaks of 20 minutes or less in duration as a result of Wells Fargo's common
26 policy and practice of not properly paying its non-exempt employees for recorded breaks of 20
27 minutes or less in duration in violation of New York state laws.

1 policies and practices.

2 88. *Adequacy of Representation.* The New York Plaintiffs will fairly and adequately
3 protect the interests of the New York Class Members and have retained counsel experienced in
4 pursuing complex employment matters and class action/multi-party litigation who will adequately,
5 competently and vigorously represent the interests of the New York Class Members. The New
6 York Plaintiffs' claims are not adverse or in conflict with the claims of the New York Class
7 Members.
8

9 89. *Superiority.* Class action treatment is superior to other available methods for the
10 fair and efficient adjudication of the controversy alleged herein. Treating this as a class action will
11 permit a large number of persons to prosecute their common claims in a single forum
12 simultaneously, efficiently and without the duplication of effort and expenses that numerous
13 individual actions would entail.
14

15 **ALLEGATIONS RELATING TO**
16 **PLAINTIFFS' INDIVIDUAL CLAIMS**

17 90. Plaintiffs are all non-exempt employees of Wells Fargo who worked in a Wells
18 Fargo banking facility or other office.

19 91. During the relevant time period, Plaintiffs were required to perform "off-the-clock"
20 work for which they were not compensated.
21

22 92. Plaintiffs spent time performing work before their scheduled shift, during lunch
23 breaks and after their shift for which they were not compensated.

24 93. Plaintiffs also spent time performing work on weekends for which they were not
25 compensated.
26

27 94. Defendants implemented a policy or practice with respect to Plaintiffs, as follows:
28 (i) Plaintiffs generally were only paid for their scheduled shift time; (ii) Plaintiffs were not paid

1 for work they performed before their scheduled shift began, during their unpaid meal breaks, and
 2 after the end of their scheduled shifts; (iii) Plaintiffs were required to open the branch and close
 3 the branch, and they were not paid for this time when it was not included in their schedule, which
 4 was most of the time; (iv) Plaintiffs were required to work through lunch, and they were not paid
 5 for this time. Some of the Plaintiffs were required to spend time outside the branch and beyond
 6 their scheduled shift to market Defendants' financial products and develop business, and they were
 7 not paid for time spent performing these duties.
 8

9 **CLAIMS FOR RELIEF**

10 **FIRST CAUSE OF ACTION** 11 **FLSA PLAINTIFFS' OFF-THE-CLOCK CLAIMS** 12 **AGAINST WELLS FARGO FOR FLSA VIOLATIONS** 13 **(INDIVIDUAL CLAIMS)**

14 95. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
 15 fully rewritten herein.

16 96. Plaintiffs Monique Perez, Porcelynne Hawthorne, Thaxton V. Rowe, Jr., Corry A.
 17 Williams, Karla P. Salazar, John Sorocenski, and John K. Lynch bring individual FLSA claims for
 18 off-the-clock violations as described herein ("FLSA Plaintiffs").

19 97. Wells Fargo employed FLSA Plaintiffs during the requisite statutory period and at
 20 all relevant times has been engaged in interstate commerce and/or in the production of goods for
 21 commerce within the meaning of the FLSA, 29 U.S.C. § 203.
 22

23 98. Each FLSA Plaintiff has signed a consent pursuant to 29 U.S.C. §§ 216(b) and 256,
 24 and these consents are being filed along with this Complaint.

25 99. The FLSA requires that each covered employer compensate all non-exempt
 26 employees at a rate of one and one-half times their regular rates of pay for all hours worked in
 27 excess of forty hours per work week.
 28

1 100. FLSA Plaintiffs are entitled to be paid overtime compensation for all overtime
2 hours worked and/or minimum wages.

3 101. At all relevant times, pursuant to company policies, procedures and practices, Wells
4 Fargo failed and refused to pay overtime compensation and/or minimum wages to Plaintiffs in
5 violation of the FLSA.

6 102. Such conduct constitutes a willful violation of the FLSA within the meaning of 29
7 U.S.C. § 255(a).

9 103. FLSA Plaintiffs seek damages in the amount of their respective unpaid overtime
10 compensation, unpaid minimum wages, liquidated damages as provided by the FLSA, interest,
11 and all other compensatory, equitable and other legal relief to which they may be entitled.

12 104. FLSA Plaintiffs seek recovery of their attorneys' fees, litigation expenses and costs
13 to be paid by Defendants as provided by the FLSA, 29 U.S.C. § 216(b).

15 **SECOND CAUSE OF ACTION**
16 **CLAIMS AGAINST DEFENDANTS FOR FAILURE TO PAY FOR RECORDED BREAKS**
17 **OF 20 MINUTES OR LESS IN VIOLATION OF THE FLSA**
(COLLECTIVE ACTION CLAIMS)

18 105. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
19 fully rewritten herein.

20 106. At all relevant times, Wells Fargo has been and continues to be an "employer" of
21 FLSA Plaintiffs and members of the collective action engaged in interstate commerce and/or in
22 the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203.

24 107. Each FLSA Plaintiff has signed a consent pursuant to 29 U.S.C. §§ 216(b) and 256,
25 and such consents are being filed along with this complaint.
26
27
28

1 108. Pursuant to the Code of Federal Regulations promulgated by the United States
2 Department of Labor, pursuant to the Fair Labor Standards Act, breaks that are 20 minutes or less
3 must be paid:

4 **Rest periods of short duration, running from 5 minutes to about 20 minutes,**
5 are common in industry. They promote the efficiency of the employee and are
6 customarily paid for as working time. **They must be counted as hours worked.**
7 Compensable time of rest periods may not be offset against other working time
8 such as compensable waiting time or on-call time.

8 29 C.F.R. § 785.18 (emphasis added).

9 109. At all relevant times, pursuant to company policies, procedures and practices, Wells
10 Fargo failed and refused to pay for recorded breaks of 20 minutes or less in duration to FLSA
11 Plaintiffs and members of the FLSA Collective Action in violation of the FLSA.

12 110. Wells Fargo was advised of and aware of this requirement and aware that its time
13 system did not pay for recorded breaks regardless of length. Such conduct constitutes a willful
14 violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

15 111. FLSA Plaintiffs, on behalf of themselves and the members of the FLSA Collective
16 Action, seek damages in the amount of their respective unpaid compensation, liquidated damages
17 as provided by the FLSA, interest, and all other compensatory, equitable and other legal relief to
18 which they may be entitled.

19 112. FLSA Plaintiffs, on behalf of themselves and the members of the FLSA Collective
20 Action, seek recovery of their attorneys' fees, litigation expenses and costs to be paid by Wells
21 Fargo as provided by the FLSA, 29 U.S.C. § 216(b).

THIRD CAUSE OF ACTION
CALIFORNIA PLAINTIFFS' OFF-THE-CLOCK CLAIMS AGAINST DEFENDANTS
IN VIOLATION OF THE CALIFORNIA LABOR CODE §§ 510, 1194
(INDIVIDUAL CLAIMS)

113. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

114. Plaintiffs Monique Perez, Thaxton V. Rowe, Jr. and Porcelynne Hawthorne ("California Plaintiffs") bring individual claims against Defendants for off-the-clock claims in violation of the California Labor Code.

115. California Labor Code §§ 510, 1194 and all applicable Industrial Welfare Commission Wage Orders (including but not necessarily limited to, 8 Cal Code Regs § 11070), provide that employees in California shall not be employed more than eight (8) hours in any workday, and more than forty (40) hours in any workweek, unless they receive additional compensation beyond their regular wages at a rate of time and one-half (1 ½), with double time after eight (8) hours of the seventh day of any work week or twelve (12) hours in any work day.

116. California Plaintiffs were regularly and consistently required to work more than (8) hours in any workday (sometimes exceeding 12 hours), and more than forty 40 hours in any workweek and were not compensated for such work at premium rates.

117. Defendants knowingly and willfully violated the provisions of the California Labor Code §§ 510 and 1194 by refusing to perform their obligations to compensate California Plaintiffs for all wages earned and all hours worked.

118. As a result of the unlawful acts of Defendants, California Plaintiffs have been deprived of overtime in amounts to be determined at trial and are entitled to recover such amounts, plus interest and penalties, attorneys' fees and costs pursuant to Labor Code §§ 510 and 1194.

FOURTH CAUSE OF ACTION
CLAIMS AGAINST DEFENDANTS FOR VIOLATION OF
CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*
(CLASS ACTION CLAIMS)

119. California Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

120. The California Plaintiffs bring these claims individually and in a representative capacity on behalf of the California Class.

121. The California Unfair Competition Law (“UCL”), California Business & Professions Code § 17200 *et seq.*, prohibits unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

122. During all relevant times, Defendants committed unlawful, unfair, deceptive, and/or fraudulent acts as defined by California Business & Professions Code § 17200. Defendants’ unlawful, unfair, deceptive, and/or fraudulent business practices include, without limitation, failing to pay overtime wages, failing to pay for all hours worked or that were required to be paid, failing to pay minimum wages, failing to provide and authorize mandated meal and rest periods, and failing to pay all wages upon termination in violation of California law.

123. Defendants’ course of conduct, acts, and practices in violation of the California laws mentioned in the above paragraph constitute a separate and independent violation of the UCL.

124. As a result of this unlawful and/or unfair and/or fraudulent business practice, Defendants reaped unfair benefits and illegal profits at the expense of California Plaintiffs and the California Class. Defendant must disgorge these illegally obtained gains and restore to the California Plaintiffs and California Class Members all wrongfully withheld wages, including, but not limited to minimum wages and overtime compensation.

1 125. California Plaintiffs, individually and on behalf of the members of the California
2 Class, respectfully request that judgment be awarded in their favor to provide restitution and
3 interest, and the relief requested below in the Prayer for Relief.

4 **FIFTH CAUSE OF ACTION**
5 **CLAIMS AGAINST DEFENDANTS FOR FAILURE TO PAY FOR RECORDED BREAKS**
6 **OF 20 MINUTES OR LESS IN VIOLATION OF CALIFORNIA STATE LAW**
7 **(CLASS ACTION CLAIMS)**

8 126. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
9 fully rewritten herein.

10 127. The California Plaintiffs bring these claims individually and in a representative
11 capacity on behalf of the California Class.

12 128. Under California law, rest periods are counted as time worked. Wage Orders Nos.
13 1-2001-16-2001, §§ 11-12(A) (8 Cal Code Regs §§11010-11160, §§ 11-12(A)).

14 129. California requires that bona fide meal periods be at least 30 minutes
15 (uninterrupted) or they are considered time worked. Cal. Lab. Code § 512(a).

16 130. The California Plaintiffs and California Class Members did not and continue to not
17 receive the California statutory minimum wages, regular wages and/or overtime wages for all
18 recorded breaks of 20 minutes or less in duration.

19 131. Consequently, by failing to pay California Plaintiffs and other members of the
20 putative California Class wages for all recorded breaks of 20 minutes or less in duration Wells
21 Fargo violated California wage and hour laws. Wage Orders Nos. 1-2001-16-2001, §§ 11-12(A)
22 (8 Cal Code Regs §§11010-11160, §§ 11-12(A)); Cal. Lab. Code § 512(a); Cal. Bus. & Prof. Code
23 § 17200 *et seq.*

24 132. By the foregoing actions, Wells Fargo has violated the California Labor Code and
25 is liable to Plaintiffs and the members of the California Class who have performed work for Wells
26
27
28

1 Fargo within the State of California in an amount to be determined at trial, plus interest, attorneys'
2 fees, litigation expenses and costs.

3 **SIXTH CAUSE OF ACTION**
4 **FAILURE TO PROVIDE REQUIRED MEAL BREAKS**
5 **PURSUANT TO CALIFORNIA LABOR CODE §§226.7, 512**
6 **(CLASS ACTION CLAIMS)**

7 133. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
8 fully rewritten herein.

9 134. The California Plaintiffs bring these claims individually and in a representative
10 capacity on behalf of the California Class.

11 135. At all times relevant herein, in violation of Labor Code § 226.7(a), Wells Fargo
12 knowingly and intentionally required employees to work during meal periods mandated by Labor
13 Code § 512 and California Administrative Code § 11040.

14 136. Section 11(A) of the applicable Wage Order and section 512 of the Labor Code
15 require an employer to pay an additional hour of compensation for each meal period the employer
16 fails to provide. Employees are entitled to a meal period of at least thirty (30) minutes per five (5)
17 hour work period. California Plaintiffs and the California Class Members worked over five (5)
18 hour shifts.

19 137. Wells Fargo failed to provide California Plaintiffs and the California Class
20 Members with meal breaks as required by the Code.

21 138. Section 11(B) of the applicable Wage Order states that if an employer fails to
22 provide an employee with a meal period, the employer shall pay the employee one hour of pay at
23 the employee's regular rate of compensation for each workday that the meal period is not provided.

24 139. As a proximate result of Wells Fargo's violation, California Plaintiffs and the
25 California Class Members were injured. Pursuant to Labor Code § 226.7(b) and related
26
27
28

1 administrative orders and regulations California Plaintiffs and the California Class Members are
2 entitled to damages in an amount equal to one (1) hour of wages for each missed meal break, in a
3 sum to be proven at trial.

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO ALLOW REST BREAKS**
6 **PURSUANT TO LABOR CODE § 226.7**
7 **(CLASS ACTION CLAIMS)**

8 140. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
9 fully rewritten herein.

10 141. The California Plaintiffs bring these claims individually and in a representative
11 capacity on behalf of the California Class.

12 142. California Labor Code § 226.7(a) prohibits an employer from requiring employees
13 to work during any rest period mandated by an applicable order of the IWC.

14 143. The IWC has issued various Wage Orders including Wage Order 4, which regulates
15 Professional, Technical, Clerical, Mechanical and Similar Operations, including persons such as
16 California Plaintiffs and California Class Members.

17 144. Section 12(A) of the applicable Wage Order states that “the authorized rest period
18 time shall be based on the total hours worked daily at the rate of ten minutes net rest time per four
19 hours or major fraction thereof.”

20 145. Section 12(B) of the applicable Wage Order requires an employer to pay an
21 employee one hour of regular pay for each work day that the rest period is not provided.

22 146. At all times relevant herein, in violation of Labor Code § 226.7(a), Wells Fargo
23 knowingly and intentionally required employees to work during required rest periods.

24 147. Wells Fargo failed to provide California Plaintiffs and the California Class
25 Members with rest breaks as required by the Code.
26
27
28

1 148. As a proximate result of Wells Fargo's violation, California Plaintiffs and the
2 California Class Members were injured. Pursuant to Labor Code § 226.7(b) and related
3 administrative orders and regulations, Plaintiff and the Class members are entitled to damages in
4 an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial.

5 **EIGHTH CAUSE OF ACTION**
6 **WAITING TIME PENALTIES UNDER**
7 **CALIFORNIA LABOR CODE §§ 201-203**
8 **(CLASS ACTION CLAIMS)**

9 149. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
10 fully rewritten herein.

11 150. The California Plaintiffs bring these claims individually and in a representative
12 capacity on behalf of the California Class.

13 151. The California Plaintiffs and numerous California Class Members are no longer
14 employed by Defendants, in that they quit or were discharged from employment.

15 152. Defendants willfully refused, and continue to refuse, to pay these California
16 Plaintiffs and California Class Members all wages earned and owed in a timely manner as required
17 by California Labor Code §§ 201, 202, and 203.

18 153. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
19 knew wages were due but failed to pay them, thus entitling California Plaintiffs and California
20 Class Members to penalties under Labor Code § 203, which provides that an employee's wages
21 shall continue as a penalty until for a period up to thirty (30) days from the time they were due.
22

23 154. Defendants have failed to pay California Plaintiffs and others a sum certain at the
24 time of termination or within seventy-two (72) hours of their resignation, and have failed to pay
25 those sums for thirty (30) days thereafter.
26
27
28

1 155. Pursuant to the provisions of California Labor Code § 203, California Plaintiffs and
2 the California Class Members are entitled to a penalty in the amount of their daily wage multiplied
3 by thirty (30) days.

4 **NINTH CAUSE OF ACTION**
5 **BREACH OF CONTRACT IN VIOLATION**
6 **OF CALIFORNIA STATE LAW**
7 **(CLASS ACTION CLAIMS)**

8 156. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
9 fully rewritten herein.

10 157. The California Plaintiffs bring these claims individually and in a representative
11 capacity on behalf of the California Class.

12 158. Defendants' employee handbook constitutes an agreement with each respective
13 Plaintiff and member of the Class.

14 159. The handbook provides that "if you're in a non exempt position, you are entitled to
15 pay for all hours actually worked, even those that exceed your regular schedule or that are not
16 authorized before working them."

17 160. With regard to overtime, the handbook states that "all team members may be
18 required to work hours in addition to their standard hours as directed by their manager. The Fair
19 Labor Standards Act (FLSA) requires that nonexempt employees receive overtime pay if they
20 work more than 40 hours in a workweek. In some locations, there may also be additional state law
21 governing overtime pay."
22

23 161. The handbook defines "breaks" as "paid rest periods of no more than 15 minutes,
24 scheduled as appropriate (or legally required) by the manager."
25

26 162. California Plaintiffs and members of the California Class have performed all of
27 their obligations under the agreement as set forth in the employee handbook.
28

1 163. Defendants' have breached the agreement as set forth in its employee handbook by
2 failing to pay California Plaintiffs and members of the California Class for all hours actually
3 worked.

4 164. In addition, Defendants have breached their agreements with California Plaintiffs
5 and members of the California Class by failing to pay them overtime wages when applicable.
6

7 165. Defendants have further breached the agreement by failing to compensate
8 California Plaintiffs and members of the California Class for breaks of 15 minutes or less.

9 166. As a result of Defendants' breaches, California Plaintiffs and members of the
10 California Class have been damaged in an amount to be established at the time of trial.
11

12 **TENTH CAUSE OF ACTION**
13 **BREACH OF CONTRACT FOR FAILURE TO PAY**
14 **FOR BREAKS OF 15 MINUTES OR LESS**
15 **IN VIOLATION OF TEXAS STATE LAW**
16 **(CLASS ACTION CLAIMS)**

17 167. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
18 fully rewritten herein.

19 168. Plaintiffs Corry A. Williams and Elizabeth Villa-Montes ("Texas Plaintiffs") bring
20 these claims individually and in a representative capacity on behalf of Texas Class Members.

21 169. Each Texas Plaintiff and member of the Texas Class entered into a written and/or
22 oral agreement which constitutes a valid and enforceable contract.

23 170. The terms of the written and/or oral agreement are found in Defendants' Team
24 Member Handbook.

25 171. The handbook defines "breaks" as "paid rest periods of no more than 15 minutes,
26 scheduled as appropriate (or legally required) by the manager."
27
28

1 172. Texas Plaintiffs and members of the Texas Class performed all of their obligations
2 under such contract.

3 173. Defendants' failure to pay Texas Plaintiffs and members of the Texas Class all
4 wages owed for breaks of 15 minutes or less in accordance with the Team Member Handbook
5 constitutes a breach of contract.

6 174. As a direct and proximate result of Defendants' breach, Texas Plaintiffs and
7 members of the Texas Class suffered injury in the form of actual damages.
8

9 **ELEVENTH CAUSE OF ACTION**
10 **BREACH OF CONTRACT FOR FAILURE TO PAY FOR**
11 **NON-BONA FIDE MEAL PERIODS IN VIOLATION**
12 **OF TEXAS STATE LAW**
13 **(CLASS ACTION CLAIMS)**

14 175. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
15 fully rewritten herein.

16 176. The Texas Plaintiffs bring these claims individually and in a representative capacity
17 on behalf of Texas Class Members.

18 177. Each respective Texas Plaintiff and member of the Texas Class entered into a
19 written and/or oral agreement which constitutes a valid and enforceable unilateral contract.

20 178. The terms of the written and/or oral agreement are found in Defendants' Team
21 Member Handbook.

22 179. The handbook defines "meal period" as "unpaid time off, ranging from 30 to 60
23 minutes."

24 180. Texas Plaintiffs and members of the Texas Class took breaks that do not constitute
25 a "meal period" as defined in the handbook.
26
27
28

1 181. Texas Plaintiffs and members of the Texas Class performed all of their obligations
2 under such contract.

3 182. Defendants' failure to pay Texas Plaintiffs and members of the Texas Class for
4 breaks that are non-bona fide meal periods constitutes a breach of contract.

5 183. As a direct and proximate result of Defendants' breach, Texas Plaintiffs and
6 members of the Texas Class suffered an injury in the form of actual damages.
7

8 **TWELTH CAUSE OF ACTION**
9 **PLAINTIFFS' OFF-THE-CLOCK CLAIMS AGAINST DEFENDANTS**
10 **IN VIOLATION OF NYLL AND NYCRR**
11 **(INDIVIDUAL CLAIMS)**

12 184. Each and every allegation contained in the foregoing paragraphs is re-alleged as if
13 fully rewritten herein.

14 185. Plaintiffs Brian Lynch, Sezgin Unay, John Sorocenski, Brandon Grzan, and John
15 K. Lynch ("New York Plaintiffs") assert off-the-clock claims against Defendants for vioaltions of
16 NYLL and NYCRR.

17 186. New York Plaintiffs' individual state law claims arise under (1) 12 NYCRR § 142-
18 2.2, which provides that "[a]n employer shall pay an employee for overtime at a wage rate of one
19 and one-half times the employee's regular rate;" (2) NYLL § 652(1), which specifies a minimum
20 wage that "[e]very employer shall pay to each of its employees for each hour worked" (emphasis
21 added); and (3) NYLL §§ 190 and 191, which require that employees be compensated at the legal
22 rates for all hours worked.
23

24 187. New York Plaintiffs' individual state law claims further are actionable pursuant to
25 NYLL § 663, which creates a private right of action to enforce the rights established by NYLL §
26 652 and NYCRR § 142-2.2, and which states "[i]f any employee is paid by the employer less than
27 the wage to which he is entitled under the provisions of this article, he may recover in a civil action
28

1 the amount of any such underpayments, together with costs and such reasonable attorney's fees."

2 NYLL § 663. This cause of action is therefore properly maintained pursuant to NYLL § 663.

3 188. Plaintiffs are non-exempt employees who were/are entitled to overtime
4 compensation.

5 189. New York Plaintiffs are entitled to overtime pay for all hours in excess of forty
6 hours worked during each work week.

7
8 190. New York Plaintiffs regularly worked more than forty hours in a work week while
9 working for Defendants.

10 191. New York Plaintiffs did not receive the New York statutory minimum wages or
11 overtime compensation for all hours worked after the first forty hours in a work week.

12
13 192. Consequently, by failing to pay New York Plaintiffs the minimum wages and
14 overtime compensation for work performed after the first forty hours worked in a work week,
15 Defendants violated NYLL §§ 652(1), 190 and 191 and 12 NYCRR § 142-2.2.

16 193. In further violation of the NYCRR, specifically section 142-2.6, Defendants have
17 failed to maintain accurate employee records, including the number of hours worked per work
18 week by New York Plaintiffs.

19
20 194. Defendants were required to pay New York Plaintiffs overtime pay and all wages
21 owed for all the hours worked over forty per work week.

22 195. Defendants' violations as described herein constitute willful violations. New
23 York Plaintiffs are, therefore, entitled to recover liquidated damages.

24
25 196. By the foregoing actions, Defendants have violated the NYLL and NYCRR and are
26 liable to New York Plaintiffs, who performed work for Defendants within the State of New York,
27 in an amount to be determined at trial, plus interest, attorneys' fees, litigation expenses and costs.

THIRTEENTH CAUSE OF ACTION
CLAIMS AGAINST WELLS FARGO FOR FAILURE TO PAY FOR RECORDED BREAKS
OF 20 MINUTES OR LESS IN VIOLATION OF NEW YORK STATE LAW
(CLASS ACTION CLAIMS)

197. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

198. The New York Plaintiffs bring these claims individually and in a representative capacity on behalf of New York Class Members

199. Pursuant to the Code of Federal Regulations promulgated by the United States Department of Labor and the Fair Labor Standards Act, breaks of 20 minutes or less in duration must be paid:

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. **They must be counted as hours worked.** Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

29 C.F.R. § 785.18 (emphasis added). This requirement is incorporated into New York Labor Law.

200. The New York State Department of Labor is charged with enforcing New York State Labor Laws, ensuring a fair wage for all workers. The New York Department of Labor has stated that:

Must employees be paid for breaks and rest periods?

While the Labor Law does not require that employers provide rest periods of short duration, if they are provided to or taken by employees, they must be counted as working time. The Department follows Federal Regulation 29 CFR §785.18 which provides that rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time[.]

1 201. This cause of action involves violations of (1) section 652(1) of the NYLL, which
2 specifies a minimum wage that “[e]very employer shall pay to each of its employees for each hour
3 worked,” and (2) violations of sections 190 and 191 of the NYLL, which similarly require that
4 employees must be compensated at the legal rates for all hours worked.

5 202. Section 663 of the NYLL creates a private right of action to enforce the rights
6 established by Article 19, and it states “[i]f any employee is paid by the employer less than the
7 wage to which he is entitled under the provisions of this article, he or she shall recover in a civil
8 action the amount of any such underpayments, together with costs, all reasonable attorney’s fees,
9 prejudgment interest as required under the civil practice law and rules, and unless the employer
10 proves a good faith basis to believe that its underpayment of wages was in compliance with the
11 law, an additional amount as liquidated damages equal to one hundred percent of the total of such
12 underpayments found to be due.” NYLL § 663.

13 203. Under New York State law, private causes of action for unpaid wages are
14 authorized under section 663 of the NYLL and are appropriate for class treatment.

15 204. New York Plaintiffs and other members of the New York Class recorded, but were
16 not paid for, breaks from work that lasted 20 minutes or less in duration while working for Wells
17 Fargo.

18 205. New York Plaintiffs and other members of the New York Class did not and
19 continue to not receive the New York statutory minimum wages, regular wages and/or overtime
20 wages for all recorded breaks of 20 minutes or less in duration.

21 206. Consequently, by failing to pay New York Plaintiffs and other members of the
22 New York Class wages for all recorded breaks of 20 minutes or less in duration, Wells Fargo
23 violated NYLL §§ 652(1), 190 and 191.

1 DATED: March 3, 2014

2 By: /s/ John M. Padilla

3 John M. Padilla

4 **PADILLA & RODRIGUEZ, L.L.P.**

5 Rhonda H. Wills

6 **WILLS LAW FIRM, PLLC**

7 *Pro Hac Vice* Pending

8 **ATTORNEYS FOR PLAINTIFFS AND**
9 **THE PUTATIVE CLASSES**

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and all others similarly situated respectfully demands a trial by jury.

DATED: March 3, 2014

By: /s/ John M. Padilla
John M. Padilla
PADILLA & RODRIGUEZ, L.L.P.

Rhonda H. Wills
WILLS LAW FIRM, PLLC
Pro Hac Vice Pending

**ATTORNEYS FOR PLAINTIFFS AND
THE PUTATIVE CLASSES**